

2005

Oak Lane Homeowners Association v. Dennis L. Griffin, and Renae Griffin : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

OAK LANE HOMEOWNERS
ASSOCIATION

Appellant/Plaintiff,

vs.

DENNIS L. GRIFFIN and
RENAE GRIFFIN,

Appellees/Defendants.

DENNIS L. GRIFFIN and
RENAE GRIFFIN,

Counterclaim Plaintiffs,

vs.

MARCUS BARNEY, HEATHER
BARNEY, RICK C. FARR, TONI C.
FARR, CLAUDE (RICK) FARR JR.,
ANDREW STEVEN WILSON,
CHARLES CAMPBELL,
OAK LANE ASSOCIATES, and
THE OAK LANE HOMEOWNERS'
ASSOCIATION,

Counterclaim Defendants.

BRIEF OF APPELLANT

Appeal Case No. 20050140CA

District Court Case No. 030405130

Appeal From the Fourth Judicial District Court, Utah County, State of Utah
The Honorable Gary D. Stott

OAK LANE HOMEOWNERS
ASSOCIATION

Appellant/Plaintiff,

vs.

DENNIS L. GRIFFIN and
RENAE GRIFFIN,

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APPELLANT REQUESTS ORAL ARGUMENT AND A PUBLISHED DECISION

LIST OF PARTIES

Appellant

Oak Lane Homeowners Association (“Association”)

Appellees

Dennis L. Griffin and Renae Griffin (“Griffins”)

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I. STATEMENT OF JURISDICTION

Pursuant to U.C.A. § 78-2a-3(2)(j) and the Utah Constitution, Art. VIII, § 3, this Court has jurisdiction over the present appeal.

II. STATEMENT OF THE ISSUES AND STANDARD OF REVIEW

ISSUE 1: Did the trial court err by ignoring disputed issues of fact when it awarded the Griffins summary judgment against the Association’s quiet title/declaratory judgment and injunctive relief causes of action?

Standard of Appellate Review: De Novo. Because this is a question of law, the trial court’s legal conclusions are given no deference and its decision is reviewed for correctness. White v. Gary L. Deeselhorst, NP Ski Corp., 879 P.2d 1371, 1374 (Utah 1994).

ISSUE 2: Did the trial court err by ignoring the undisputed fact that no public easement

has ever been recorded on the property—a fact that renders summary judgment in favor of the Griffins contrary to established Utah caselaw?

Standard of Appellate Review: De Novo. Because this is a question of law, the trial court's legal conclusions are given no deference and its decision is reviewed for correctness. Id.

III. STATEMENT OF THE CASE

A. Nature of the Case

This dispute involves four neighboring homeowners who formed the Association, and another neighbor, the Griffins, who refused to join the Association. When the Association asked the Griffins to cease using Oak Lane, a road the Association has always understood to be privately-owned (the original owners in the neighborhood and Oak Lane quit claimed their interest in Oak Lane to the Association in 2003), the Griffins refused. Accordingly, because the Griffins were using Oak Lane without permission and without contributing anything toward its up-keep, the Association filed the underlying lawsuit against the Griffins, claiming (1) trespass, (2) quiet title/declaratory relief, (3) injunctive relief, and (4) conversion. [R at 10.] The Griffins counterclaimed against the Association for (1) declaratory judgment, (2) trespass, and (3) boundary by acquiescence. [R at 61.]

B. Proceedings Below

The Association instituted this action by filing its Complaint on November 19, 2003. The Griffins filed their Counterclaim in response.

The Association initially moved for summary judgment on January 28, 2004, which the Griffins opposed with a Rule 56(f) request for additional time to conduct discovery. On April 7, 2004, the trial court granted said request and continued the Association's summary judgment motion. [R at 322.]

Subsequently, the Griffins filed a summary judgment motion against all of the Association's causes of action on April 7, 2004, which the Association opposed. The trial court, unpersuaded by arguments from either party, issued its August 20, 2004 *Ruling Re: Defendants' Partial Motion for Summary Judgment*, granting the Griffins' motion based on its own research and legal basis. [R at 378.]¹

The Association responded with *Plaintiff's Motion to Reconsider* on September 10, 2004, which the Griffins opposed. In response, the trial court issued its December 8, 2004 *Ruling Re: Plaintiff's Motion to Reconsider and Defendants' Partial Motion for Summary Judgment* in which it granted the Griffins' summary judgment motion, but on a completely different basis than the basis contained in its August 20th ruling. [R at 446.]² The Association appeals the December 9th ruling and the August 20th ruling to the degree it might apply to the Griffins' summary judgment motion.

¹ A true and correct copy of this ruling is attached to the Appendix as Exhibit A.

² A true and correct copy of this ruling is attached to the Appendix as Exhibit B.

C. Material Facts

1. The original Oak Hills Haven subdivision plat map shows that the original subdivision landowners, Don G. Taylor, Sharon Taylor, Dale T. Dibb, Linda N. Dibb, Gordon Van Wagoner, Kim C. Turner, and Sherry L. Turner were “owners of all of the property” described in the plat. [R at 4.]³

2. In the “Owner’s Dedication” on this plat (signed January 13, 1977), the owners expressly refused to dedicate the “Private Lane” to the public as indicated by stricken language:

KNOW ALL MEN BY THESE PRESENTS THAT WE, ALL OF THE
UNDERSIGNED OWNERS OF ALL OF THE PROPERTY DESCRIBED IN THE
SURVEYOR’S CERTIFICATE HEREON AND SHOWN ON THIS MAP, HAVE
CAUSED THE SAME TO BE SUBDIVIDED INTO LOTS, BLOCKS, STREETS
AND EASEMENTS ~~AND DO HEREBY DEDICATE THE STREETS AND OTHER
PUBLIC AREAS AS INDICATED HEREON FOR PERPETUAL USE OF THE
PUBLIC.~~

Id.

3. The Alpine City Council did not give their acceptance to the plat on the Oak Hills Haven subdivision until January 13, 1977. Id.

4. Just as the original owners had done, the Alpine City Council also lined through the dedication acceptance language in their “Acceptance by Legislative Body” which reads:

THE CITY COUNCIL OF ALPINE CITY, COUNTY OF UTAH, APPROVES THIS
SUBDIVISION ~~AND HEREBY ACCEPTS THE DEDICATION OF ALL STREETS,~~

³ A true and correct copy of this plat is attached to the Appendix as Exhibit C.

~~EASEMENTS, AND OTHER PARCELS OF LAND INTENDED FOR PUBLIC PURPOSES FOR THE PERPETUAL USE OF THE PUBLIC THIS 13TH DAY OF JANUARY, A.D. 1977.~~

Id.

5. The plat was revised twice—December 13, 1976 and January 28, 1977—and finally recorded on February 2, 1977. [R at 308.]

6. Prior to this, on April 26, 1976, the Alpine City Council adopted a zoning ordinance (“1976 Ordinance”). [R at 267.]⁴

7. Among other things, the 1976 Ordinance provided for creation of a “Common Use Private Lane” with a public easement attached thereto. [R at 245-46; 1976 Ordinance pgs. 19-20.]

8. However, chapter III(G) of the 1976 Ordinance expressly limits the private lanes allowed under said ordinance to “no more than four (4) residential dwelling units . . .” [R at 246.]

9. According to minutes from the January 3, 1977 Alpine City Council meeting, sometime near the end of 1976, Alpine City Council placed a moratorium on the Common Use Private Lanes. [R at 338.] The same minutes also purport that the Alpine City Council approved Oak Hills Haven subdivision prior to the moratorium. Id.

⁴ A true and correct copy of the 1976 Ordinance is attached to the Appendix as Exhibit D.

IV. SUMMARY OF ARGUMENT

The trial court incorrectly held that the 1976 Ordinance pass by the Alpine City Council is dispositive of the Association's quiet title/declaratory relief and injunctive relief causes of action because of disputed issues of fact raised by the stricken dedicatory language on the plat map—language stricken by both the original subdivision landowners and the Alpine City Council.

Further, additional issues of fact exist as to whether the 1976 Ordinance applied to the Oak Hills Haven subdivision because (a) the moratorium in question was enacted before the plat was officially accepted by Alpine, and (b) the 1976 Ordinance is inapplicable since the Oak Hills Haven subdivision contains five lots when the ordinance applies to subdivisions of four lots or less.

Finally, in addition to disputed issues of fact, as a matter of law, the trial court incorrectly granted summary judgment based on the undisputed fact that no public easement existed on Oak Lane because no such easement has ever been recorded.

V. ARGUMENT

Under the Utah Rules of Civil Procedure, a court may not grant summary judgment unless the moving party establishes “[1] that there is no genuine issue as to any material fact and [2] that the moving party is entitled to judgment as a matter of law.” U.R.C.P. 56(c). When a court addresses a motion for summary judgment, the court’s function is not to weigh disputed evidence or to decide which side has the stronger case. Rather, the court’s “sole inquiry should be whether material issues of fact exist.” Draper City v. Estate of Bernardo, 888 P.2d 1097, 1100 (Utah 1995).

The nonmoving party is not required to “prove” its case in order to defeat a summary judgment motion. Rather, the nonmoving party is only required to submit evidence “sufficient to raise a genuine issue of fact.” Kleinert v. Kimball Elevator Co., 854 P.2d 1025, 1028 (Utah App. 1993). In addition, “If there is any doubt or uncertainty concerning questions of fact, the doubt should be resolved in favor of the opposing party [and] the court must evaluate all the evidence and all reasonable inferences fairly drawn from the evidence in a light most favorable to the party opposing summary judgment.” Bowen v. Riverton City, 656 P.2d 434, 436 (Utah 1982). Finally, the nonmoving party’s evidence is to be believed for purposes of the motion, and if there is a conflict in the evidence as to a material fact, the motion must be denied. Draper City, 888 P.2d at 1100-01.

Based on this standard and the evidence presented below, disputed issues of fact preclude the trial court from granting the Griffins’ Motion for Partial Summary Judgment.

**A. THE TRIAL COURT IGNORED DISPUTED ISSUES OF FACT IN
AWARDING THE GRIFFINS SUMMARY JUDGMENT AGAINST THE
ASSOCIATION’S QUIET TITLE/DECLARATORY JUDGMENT AND
INJUNCTIVE RELIEF CAUSES OF ACTION**

The trial court awarded the Griffins summary judgment against the Association’s quiet title/declaratory judgment and injunctive relief causes of action.⁵ The trial court based its ruling on a moratorium against private lanes enacted by the Alpine City Council in April of 1976 and the supposed effect of said ordinance on Oak Lane as a “private lane.” The trial court found that Oak Lane was not subject to the moratorium, but that Oak Lane was subject to the 1976 Ordinance which created a public easement across Oak Lane.

However, the trial court’s ruling which creates a public easement across Oak Lane ignores issues of fact regarding (1) dedication language on the plat map that was struck out by the Alpine City Council and the original owners of the subdivision, and (2) the 1976 Ordinance’s inapplicability to the Oak Hills Haven subdivision.

**1. Based on the Stricken Dedication Language on the Plat Map, Neither
the Alpine City Council Nor the Original Homeowners Intended To
Publically Dedicate Oak Lane**

The Oak Hills Haven subdivision plat map contains a public dedication provision on

⁵ The trial court also awarded the Griffins summary judgment against the Association’s conversion claim. However, the Association does not appeal that portion of the trial court’s ruling. Regarding the Association’s fourth claim (trespassing), it voluntarily dismissed said claim which is thus not a part of this appeal. Thus, the Association only appeals the dismissal of its quiet title/declaratory relief and injunctive relief causes of action.

it, which reads (with stricken language in the original):

KNOW ALL MEN BY THESE PRESENTS THAT WE, ALL OF THE
UNDERSIGNED OWNERS OF ALL OF THE PROPERTY DESCRIBED IN THE
SURVEYOR'S CERTIFICATE HEREON AND SHOWN ON THIS MAP, HAVE
CAUSED THE SAME TO BE SUBDIVIDED INTO LOTS, BLOCKS, STREETS
AND EASEMENTS ~~AND DO HEREBY DEDICATE THE STREETS AND OTHER
PUBLIC AREAS AS INDICATED HEREON FOR PERPETUAL USE OF THE
PUBLIC.~~

[R at 4.] This “Owners’ Dedication” was signed January 13, 1977. Id. The stricken
dedication language, however, indicates that the original subdivision landowners expressly
refused to dedicate any of the subdivision to the public.

Further, just below the “Owners’ Dedication,” the Alpine City Council similarly
lined through the dedication acceptance language in their “Acceptance by Legislative Body”
which reads (with the stricken language in the original):

THE CITY COUNCIL OF ALPINE CITY, COUNTY OF UTAH, APPROVES THIS
SUBDIVISION ~~AND HEREBY ACCEPTS THE DEDICATION OF ALL STREETS,
EASEMENTS, AND OTHER PARCELS OF LAND INTENDED FOR PUBLIC
PURPOSES FOR THE PERPETUAL USE OF THE PUBLIC THIS 13TH DAY OF
JANUARY, A.D. 1977.~~

Id.⁶ Thus, notwithstanding the 1976 ordinance, the Alpine City Council members, the city
engineer and the city-recorder all signed this acceptance on January 13, 1977, with the
dedication language stricken. Accordingly, it was the intent of the Alpine City Council that
no land from Oak Hills Haven would be dedicated to the public.

⁶ This “Acceptance by Legislative Body” was signed by the six Alpine City council
members, the city engineer and the city-recorder. [R at 4, 312.]

At the very least, issues of fact exist as to the intent of the Alpine City Council when, notwithstanding the 1976 Ordinance, the subdivision owners at that time and the city council still struck out the dedication language in the plat map that would have made Oak Lane public.

2. Issues of Fact Exist as to Whether the 1976 Ordinance Applied to the Oak Hills Haven Subdivision

Another reason the trial court erred in granting the Griffins' summary judgment motion against the Association's claims is that the 1976 Ordinance did not apply to the Oak Hills Haven subdivision (1) because the December 13, 1976 moratorium was enacted before the plat was accepted in January of 1977, and (2) the 1976 Ordinance applied only to subdivisions with four or fewer lots.

(a). The 1976 Ordinance Did Not Apply Because the Moratorium Temporarily Repealing Said Ordinance Was Enacted Before the Plat Was Officially Accepted by the Alpine City Council

Implied in the trial court's ruling is that a public easement was somehow automatically created by the 1976 Ordinance and attached to Oak Lane, even though the subdivision was not officially approved until January of 1977. However, the trial court failed to explain or discuss exactly when the public easement took affect – i.e. When the plat was recorded? When the plat was approved? When the plat was submitted to the planning commission? When the plat was submitted to the City Council? The Court simply implies that by virtue of the 1976 Ordinance, a public easement was immediately created.

However, the question of *when* is critical due to the moratorium enacted on December 13, 1976. This is critical because everything on the original plat indicates that approval of the subdivision and acceptance of the plat occurred in January of 1977:

- the owners signed their “Owners’ Dedication” on January 13, 1977. [R at 314.]
- the Alpine City Council accepted the plat and the subdivision also on January 13, 1977. [R at 312.]
- the Alpine City planning commission approved the plat and subdivision on January 3, 1977. Id.
- the plat was recorded on February 2, 1977. [R at 310.]
- the plat itself was revised at least twice – on December 13, 1976 and January 28, 1977. [R at 308.]

Thus, based on the plat, the subdivision was not approved, accepted, and recorded until after the moratorium on the 1976 Ordinance.⁷ Said ordinance, then, is inapplicable to the subdivision, thereby invalidating the trial court’s December 9th, 2004 ruling.

(b). The 1976 Ordinance, Which Governs Subdivisions With 4 Lots Or Less Is Inapplicable Because the Oak Hills Haven Subdivision Contains Five Lots

Chapter III(G) of the 1976 ordinance provides for a private lane with a public easement as follows:

⁷ The Griffins will probably point to the January 3, 1977 minutes that indicate that Oak Hills Haven subdivision was approved before the moratorium. However, based on the evidence on the face of the plat (set forth above), a disputed issue of fact exists as to whether the plat was finally and officially part of the moratorium or not.

COMMON-USE PRIVATE LANE. The use of a private lane to provide vehicular access to more than one *but no more than four (4) residential dwelling units* is allowed in Alpine City. Permission to develop a lane may be granted by the Planning Commission upon receipt of a construction and maintenance agreement assuring that all conditions contained in this ordinance shall be met.

(Emphasis added). Not only do the Griffins fail to provide the Court with any “construction and maintenance agreement”⁸ as required in this ordinance, but the Griffins’ use of this statute is fatally flawed: the Oak Hills Haven subdivision contains five lots. [R at 246.]

Further, if the Griffins claim that their lot – Lot 2 – is somehow not a part of the Oak Hills Haven subdivision, they still cannot use the supposed public easement provided by the 1976 Ordinance because use of a private lane only “provide[s] vehicular access to more than one but no more than four (4) residential dwelling units . . .” Thus, a maximum of four units are legally able to use a private lane with a public easement envisioned by the 1976 Ordinance. In other words, if there was a public easement on Oak Lane, if anything, it is a semi-public easement only for the four lot owners that would use it for access. The Griffins are thus precluded from accessing Oak Lane if it was a “private lane” pursuant to the 1976 Ordinance. Any such “public easement” would be for the benefit only of the residents of the four units.

In either event, the 1976 Ordinance is irrelevant and inapplicable to the Griffins’

⁸ Paragraph G(1) also requires a “contract with the city” regarding the maintenance of a private lane with a public easement which the Griffins have failed to produce.

summary judgment motion.⁹

B. AS A MATTER OF LAW, NO PUBLIC EASEMENT EXISTS ON OAK LANE BECAUSE NO SUCH EASEMENT HAS EVER BEEN RECORDED

Another basis by which the trial court erred is that it ignored the undisputed fact that no public easement has been recorded on Oak Lane. The Griffins have provided no recorded writing that mentions the supposed public easement in question. The plat, which indicates that the original owners owned the “private lane” makes no reference to a public easement. To the contrary, the original owners transferred all their rights, title and interest in Oak Lane to the Association *via* a Quit Claim Deed recorded September 11, 2003. [R at 2.]

The lack of a recorded easement on Oak Lane is dispositive in this case based on Boskovich v. Midvale City Corp., 243 P.2d 435, 447-48 (Utah 1952), where the court held that:

There are a number of ways that streets may be opened or closed. ***If by ordinance, there must be something more than its mere enactment.*** We believe and hold that the procedure followed by Midvale in this case, sans notice, petition or hearing, was an unquestioned departure from the elementary principle that property cannot be taken without due process of law and without just compensation.

(Emphasis added). The whole reason the trial court granted the Griffins’ summary

⁹ The trial court ignored the 1976 Ordinance’s express application to subdivisions with four or less dwellings in its December 8, 2004 ruling, other than to conclude without any analysis or legal support, “Alpine City chose to approve Oak Lane and the Subdivision, which had five lots. The City’s approval does not nullify the provision that a public easement was created, nor does it nullify the Ordinance.” [R at 442.]

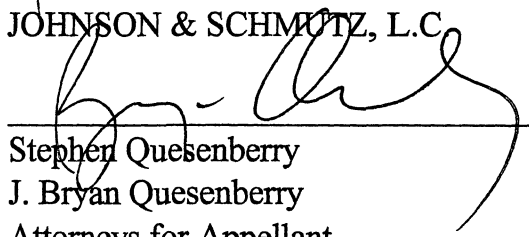
judgment motion was because of the 1976 Ordinance, which the trial court found created an easement over Oak Lane. However, Boskovich holds that in such cases, mere enactment is insufficient to open a road to the public. Id. Accordingly, this Court should reverse the trial court's dismissal of the Association's quiet title/declaratory relief and injunctive relief causes of action.

VI. CONCLUSION

Based on the foregoing, the Association requests that the Court of Appeals overturn the trial court's award of summary judgment regarding the Association's quiet title/declaratory relief and injunctive relief causes of action.

RESPECTFULLY SUBMITTED this 9 day of June, 2005.

HILL, JOHNSON & SCHMITZ, L.C.



Stephen Quesenberry
J. Bryan Quesenberry
Attorneys for Appellant

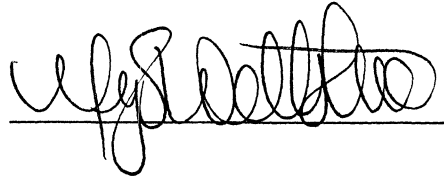
CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 9 day of June, 2005, they caused a true and correct copy of the foregoing appeal brief to be delivered to the following:

Scott M. Ellsworth
R. Christopher Preston
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215 South State Street, Suite 650
Salt Lake City, Utah 84111

Sent Via:

☒ Hand -Delivery
☐ Facsimile
☐ Mailed (postage prepaid)

A handwritten signature in black ink, appearing to read "Scott M. Ellsworth", is written over a horizontal line.

VII. APPENDIX

Exhibit A August 20, 2004 ruling

Exhibit B December 8, 2004 ruling

Exhibit C plat

Exhibit D 1976 Ordinance

EXHIBIT “A”

FILED
Fourth Judicial District Court
of Utah County, State of Utah

8/20/04 WBL Deputy

IN THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH

OAK LANE HOMEOWNER'S
ASSOCIATION,

Plaintiff,

v.

DENNIS L. GRIFFIN and RENAE GRIFFIN,

Defendants.

DENNIS L. GRIFFIN and RENAE GRIFFIN

Counterclaim Plaintiffs,

v.

MARCUS BARNEY and HEATHER
BARNEY, RICK C. FARR and TONI C.
FARR, TONI C. FARR and CLAUDE E.
(RICK) FARR JR. as CO-TRUSTEES of the
TONI C. FARR 1997 LIVING TRUST,
ANDREW STEVEN WILSON, CHARLES
CAMPBELL, OAK LANE ASSOCIATIONS,
and THE OAK LANE HOMEOWNER'S
ASSOCIATION,

Counterclaim Defendants.

**RULING RE: DEFENDANTS'
PARTIAL MOTION FOR
SUMMARY JUDGMENT**

Case # 030405130

Judge Fred D. Howard

Division 5

This matter comes before the Court on Defendants and Counterclaim Plaintiffs Dennis and Renae Griffin's (Defendants') *Motion for Partial Summary Judgment*. The Court, having reviewed the file and being fully advised in the premises, hereby issues the following:

RULING

In December 1976, the owners recorded a plat for the Oak Lane subdivision. Plaintiffs contend that Oak Lane was established as a private lane in 1976, when the owners crossed out the plat's language dedicating the lane to the public. Defendants contend that the private ownership of the lane was established by an act of the Alpine city council in January 1977. Regardless of how Oak Lane was established as a private lane, however, it was maintained thereafter by the owners of the adjoining properties as a private lane.

In 2003, the owners of four of the five lots created the Oak Lane Homeowner's Association (collectively, the Plaintiffs), which then tried to restrict access for the owner of the fifth lot. The Defendants, owners of the excluded lot, counterclaimed against the Plaintiffs and moved for partial summary judgment. Both the Plaintiffs and Defendants made several arguments, none of which was persuasive to the Court. However, this Court is bound by the controlling statute – U.C.A. 72-5-104 (the Dedication Statute) – to GRANT Defendants' *Motion for Partial Summary Judgment*.

Under the definitions given in the statute and by the courts, Oak Lane is a "highway." The definitions given in the Utah State Code indicate that a "Highway" means any public road, street, alley, lane, court, place, viaduct, tunnel, culvert, bridge, or structure . . . dedicated and abandoned to the public." U.C.A. 72-1-102(7). As lanes are explicitly provided for in the definition, Oak Lane is considered a highway under Utah State Code.

The second part of the definition above notes that the highway must be “dedicated and abandoned to the public.” *Id.* The Dedication Statute indicates that any “highway is dedicated and abandoned to the use of the public when it has been continuously used as a public thoroughfare for a period of ten years.” U.C.A. 72-5-104(1). It is apparent from the record that Oak Lane was not originally dedicated to the public. It is immaterial whether Oak Lane was made private by the crossed-out dedication language or by later Alpine City Council enactments. Either way, the owners then allowed the public to use the lane at will for the next twenty-seven years. While some people, notably the previous owners of lot 2, asked for and received permission to use the road, there is no evidence in the record that the owners otherwise restricted the public use of the lane; visitors, pizza deliverymen, babysitters, and the occasional house-hunter all presumably used the lane without permission and without encumbrance. The Defendants, in particular, used the road on an “nearly daily basis” for sixteen years without interruption. *Affidavit of Renae Griffin*, ¶ 4. Without any record of control being exercised over the lane, the lane devolved by operation of law to the public use by 1997 at the latest, and was probably abandoned to the public much earlier than that.

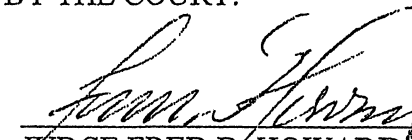
It is evident from the current action that the original owners of the lane (or their successors in interest) did not intend to abandon Oak Lane to the public. However, current Utah case law indicates that the owners do not need to intend to abandon the lane. In *Thurman v. Byram*, 626 P.2d 447 (Utah 1981), the Utah Supreme Court held that the sole requirement for a

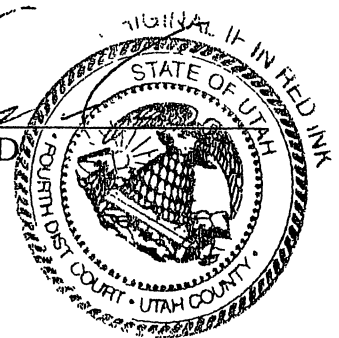
road to become public is the determination that it has been continuously used by members of the general public for at least ten years. *See also Leo M. Bertagnole, Inc. v. Pine Meadow Ranches*, 639 P.2d 211 (Utah 1981).

Given that Oak Lane meets the requirements for a “highway . . . dedicated and abandoned to the use of the public,” the Plaintiff’s claims for trespass, declaratory judgment, and injunction fail for want of standing. Similarly, those claims by which the Defendants seek to exercise an ownership interest in the road also fail. However, summary judgment is GRANTED with regards to Defendants’ claim regarding the right of the public to access the lane. Counsel for Defendants are instructed to prepare an order consistent with this Ruling.

Dated this 20th day of August, 2004.

BY THE COURT:


JUDGE FRED D. HOWARD
District Court Judge



CERTIFICATE OF DELIVERY

I certify that true copies of the foregoing Ruling were delivered on the 20 day of August, 2004 to the following in the manner indicated, to wit:

by U.S. first class mail

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215 South State Street, Suite 650
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Deputy Court Clerk

EXHIBIT "B"

FILED
Fourth Judicial District Court
of Utah County, State of Utah

12/8/04 ml Deputy

IN THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH

OAK LANE HOMEOWNER'S
ASSOCIATION,

Plaintiff,

v.

DENNIS L. GRIFFIN and RENAE GRIFFIN,

Defendants.

DENNIS L. GRIFFIN and RENAE GRIFFIN

Counterclaim Plaintiffs,

v.

MARCUS BARNEY and HEATHER
BARNEY, RICK C. FARR and TONI C.
FARR, TONI C. FARR and CLAUDE E.
(RICK) FARR JR. as CO-TRUSTEES of the
TONI C. FARR 1997 LIVING TRUST,
ANDREW STEVEN WILSON, CHARLES
CAMPBELL, OAK LANE ASSOCIATIONS,
and THE OAK LANE HOMEOWNER'S
ASSOCIATION,

Counterclaim Defendants.

RULING RE: PLAINTIFF'S
MOTION TO RECONSIDER AND
DEFENDANTS' PARTIAL MOTION
FOR SUMMARY JUDGMENT

Case # 030405130

Judge Fred D. Howard

Division 5

This matter comes before the Court on Plaintiff's *Motion to Reconsider* the August 20, 2004 Ruling. The Court, having reviewed the file and being fully advised in the premises, hereby issues the following Ruling:

BACKGROUND

Defendants own Lot 2 of Oak Hills Haven Subdivision (Subdivision) located in Alpine. Oak Lane is a small cul-de-sac, part of the Subdivision. The Subdivision plat was recorded pursuant to City of Alpine Zoning Ordinance, 01-76, which governed Alpine City zoning during the time in which the Subdivision was in development. The 1976 Ordinance provided for creation of a “common use private lane,” which allowed vehicular access for up to four residential dwelling units. The Ordinance also provided that all “common use private lanes” include a public easement. The Alpine City Council approved and accepted the Subdivision plat with five lots on January 13, 1977, which specifically included a private lane”, Oak Hills. On May 22, 1979 the Alpine City Council repealed the portion of the 1976 Ordinance regarding Common Use Private Lanes.

Up until sometime in 2003, Defendants and their predecessors in interest have accessed Lot 2 of the Subdivision by using Oak Lane. Plaintiff admits granting Defendants permission to use Oak Lane during this time. In 2003, the owners of four of the five lots created the Oak Lane Homeowner’s Association (Plaintiff). Plaintiff then attempted to restrict Defendants’ access to Lot 2 via Oak Lane. The Court granted Defendants’ motion for partial summary judgment on August 20, 2004. After revisiting the matter, the Court is constrained to revise its Ruling and grant Defendants’ motion on a different legal basis.

Plaintiff contends that Oak Lane was established as a private lane in 1976 when the

owners crossed out the plat's language dedicating the lane to the public. The act of crossing out the plat's language, Plaintiff contends, had the effect of nullifying the provision in the City Ordinance which created a public easement on Oak Lane. Plaintiff also contends that the public easement was never recorded and thus, it does not exist. Plaintiff further contends that Alpine's Ordinance is inapplicable for one of these two reasons: either Alpine City placed a moratorium on private lanes before the Subdivision plat was dedicated and therefore it is not subject to the public easement language in the Ordinance; or in the alternative, the Ordinance only provided for four lots and the Subdivision contains five lots. Plaintiff also asserts that Defendants' exhibits are inadmissible hearsay.

Defendants acknowledge that a moratorium was placed on the development of private lanes before the Subdivision was approved, but Defendants contend that the Alpine Planning Commission approved the "common use private lane" in the Subdivision prior to enacting this moratorium and, therefore, the Ordinance governs. Defendants further contend that because Oak Lane was legislatively created as a "common use private lane," it is of no consequence that the dedication of the language plat was stricken through since this act would have had no effect regarding the creation of a public easement. The Ordinance mandated that a "private lane" have a public easement. Defendants also acknowledge that while the Ordinance provided for only "four residential dwelling units," the Planning Commission nonetheless approved the private lane and recommended that "driveways 1 & 2 be from the lane." Finally, Defendants contend that

their exhibits are admissible pursuant to Rule 902(4) of the Utah Rules of Evidence as certified copies of public records.

RULING

The Court first notes that the Defendants' exhibits in question are certified copies obtained from the Alpine City Recorder. Pursuant to Utah Rules of Evidence, Rule 902(4), the exhibits are admissible.

The Court next notes that a moratorium was placed on the development of "private lanes" before the Alpine City Council approved the Subdivision. The Court is persuaded that Defendants' exhibits are persuasive on the question regarding the moratorium and its effect on Oak Lane as a "private lane." Prior to enacting the moratorium, the Alpine Planning Commission approved Oak Lane as a "common use private lane." The Alpine City Council made a note of the exception to the moratorium in its minutes that the "private lane" "was approved before the moratorium was put on lanes." The Court, therefore, finds that Oak Lane was not subject to the moratorium, but that it was subject to the 1976 Ordinance. At that time, the Ordinance stated that "[e]ach common-use [private lane] shall be established on a twenty-four (24) foot public easement with a minimum paving width of sixteen (16) feet." Since the 1976 Ordinance specifically provided for a public easement on all common use private lanes, a public easement was created across Oak Lane.

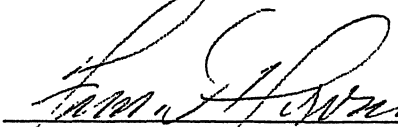
While it is true that the 1976 Ordinance allowed for the creation of a private lane which

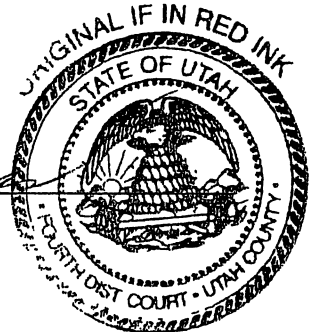
would provide access to no more than four lots, Alpine City chose to approve Oak Lane and the Subdivision, which had five lots. The City's approval does not nullify the provision that a public easement was created, nor does it nullify the Ordinance.

At the very least, Defendants are entitled to use Oak Lane as members of the public. Therefore, the Court finds that Defendants are entitled to use Oak Lane as members of the public and grants Defendants' motion for partial summary judgment. Given the proceeding analysis, the Court vacates all aspects of its prior Ruling issued on August 20, 2004 which are in conflict with this Ruling. Counsel for Defendants is instructed to prepare an order consistent with this Ruling.

Dated this 8th day of December, 2004.

BY THE COURT:


JUDGE FRED D. HOWARD
District Court Judge



CERTIFICATE OF DELIVERY

I certify that true copies of the foregoing Ruling were delivered on the 8 day of December, 2004 to the following in the manner indicated, to wit:

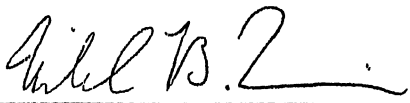
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Salt Lake City, UT 84111



Deputy Court Clerk

EXHIBIT "C"

ORDINANCE NO. 01-76

ALPINE ZONING ORDINANCE

AN ORDINANCE REPEALING ORDINANCE NO. _____, THE "ZONING ORDINANCE OF ALPINE CITY, UTAH," 1965; ESTABLISHING ZONES WITHIN ALPINE CITY, UTAH, REGULATING WITHIN SAID ZONES THE LOCATION, HEIGHT, BULK AND SIZE OF BUILDINGS AND STRUCTURES, THE PERCENTAGE OF LOTS WHICH MAY BE OCCUPIED, THE SIZE OF YARDS, COURTS, AND OTHER OPEN SPACES, THE USE OF BUILDINGS AND STRUCTURES AND LAND FOR TRADE, INDUSTRY, RESIDENCES, RECREATION, PUBLIC ACTIVITIES, OR OTHER PURPOSES; PROVIDING FOR THE ESTABLISHMENT, DUTIES AND POWERS OF THE BOARD OF ADJUSTMENT AND PLANNING COMMISSION; PROVIDING METHODS OF ADMINISTRATION AND ENFORCEMENT; PROVIDING PENALTIES FOR THE VIOLATION THEREOF; AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE CITY COUNCIL OF ALPINE CITY, UTAH, THAT AN ORDINANCE ENTITLED "ALPINE ZONING ORDINANCE" BE AND THE SAME IS HEREBY ADOPTED. SAID ORDINANCE SHALL READ AS FOLLOWS:

CHAPTER IX

PENALTIES, VALIDITY, EFFECTIVE DATE

A. PENALTIES. It shall be unlawful for any person to violate any of the provisions of this ordinance. Any person, firm, or corporation, whether as principal, agent, employee, or otherwise, violating or causing or permitting the violation of the provisions of this ordinance shall be guilty of a misdemeanor, and upon conviction thereof may be punished by imposition of a fine of not more than Two Hundred Ninety Nine (\$299.00) Dollars and a term in the county jail not to exceed three (3) months, or by both such fine and imprisonment. Each and every day such violation shall occur shall constitute a separate offense.

B. VALIDITY. If any sentence, paragraph, clause, phrase, term, provision, section or chapter of this ordinance shall be adjudged invalid or held unconstitutional, the same shall not affect the validity of this ordinance as a whole, or any part or provision thereof other than the part so decided to be invalid or unconstitutional.

C. EFFECTIVE DATE AND DECLARATION OF AN EMERGENCY. In view of impending developments and conditions requiring prompt adoption of this ordinance, it is the opinion of the City Council of Alpine City that an emergency exists and that, for the immediate preservation of the peace, health, safety, and general welfare of the City of Alpine and its inhabitants, this ordinance shall take effect upon its passage and posting in three public places within said city.

Passed by the City Council of Alpine City, Utah,
this 26th day of April, 1976.


Don A. Christiansen, Mayor

ATTEST:

STATE OF UTAH)
) ss
COUNTY OF UTAH)

I, JoAnn Nicholes, City Recorder of Alpine City, Utah, do hereby certify that the above and foregoing is a full, true and correct copy of an ordinance passed by the City Council of Alpine City, Utah, on the 26th day of April, 1976, entitled: ORDINANCE NO. 01-76, ALPINE ZONING ORDINANCE

AN ORDINANCE REPEALING ORDINANCE NO. _____, THE
"ZONING ORDINANCE OF ALPINE CITY, UTAH," 1965;
ESTABLISHING ZONES WITHIN ALPINE CITY, UTAH, REGULATING
WITHIN SAID ZONES THE LOCATION, HEIGHT, BULK AND SIZE
OF BUILDINGS AND STRUCTURES, THE PERCENTAGE OF LOTS WHICH
MAY BE OCCUPIED, THE SIZE OF YARDS, COURTS, AND OTHER
OPEN SPACES, THE USE OF BUILDINGS AND STRUCTURES AND LAND
FOR TRADE, INDUSTRY, RESIDENCES, RECREATION, PUBLIC
ACTIVITIES, OR OTHER PURPOSES; PROVIDING FOR THE
ESTABLISHMENT, DUTIES AND POWERS OF THE BOARD OF ADJUSTMENT
AND PLANNING COMMISSION; PROVIDING METHODS OF ADMINISTRATION
AND ENFORCEMENT; PROVIDING PENALTIES FOR THE VIOLATION
THEREOF; AND DECLARING AN EMERGENCY.

IN WITNESS WHEREOF, I have hereunto set
my hand and affixed the corporate seal of Alpine City,
Utah, the 26th day of April, 1976.

Spencer B. Nicholas
City Recorder

A L P I N E Z O N I N G O R D I N A N C E

FINAL DRAFT

APRIL 26, 1976

ALPINE ZONING ORDINANCE

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ALPINE CITY ZONING ORDINANCE

CHAPTER I

GENERAL PROVISIONS

- A. SHORT TITLE. This ordinance shall be known as The Alpine City Zoning Ordinance.
- B. STATEMENT OF PURPOSE. This ordinance is created and enacted to aid in the implementation of the Alpine City Comprehensive Plan, and to promote the health, safety and welfare of the inhabitants of Alpine City. The City of Alpine shall utilize powers granted to it by the Utah Code to accomplish the following:
1. Assure the proper use and management of the natural beauty and resources of Alpine City;
 2. Protect life and property from flood and geologic hazard;
 3. Encourage a density of development that will be expressive of a satisfying community life, that will conserve natural resources, protect scenic values, and prevent traffic congestion;
 4. Encourage imaginative and innovative concepts in residential and commercial development that will perpetuate the visual character of Alpine, and result in economy in the provision of municipal services.
- C. CONFLICT WITH EXISTING ORDINANCES. This ordinance shall not nullify the more restrictive provisions of covenants, agreements, other ordinances or laws, but shall prevail notwithstanding such provisions which are less restrictive.
- D. EFFECT ON PREVIOUS ORDINANCES AND MAPS. The existing ordinances covering zoning, in their entirety, and including the maps heretofore adopted and made a part of said ordinances are hereby superseded and amended to read as set forth herein; provided, however, that this ordinance, including the attached map, shall be deemed a continuation of previous ordinances and not a new enactment, insofar as the substance of revisions of previous ordinances is included in this ordinance, whether in the same or in different language and this ordinance shall be so interpreted upon all questions of construction relating to tenure of officers and boards established by previous ordinances and to questions of conforming or nonconforming uses and buildings and structures, and to questions as to the dates upon which such uses, buildings, or structures became conforming or nonconforming. Any or all ordinances that are less restrictive or inconsistent with this ordinance are superseded by this ordinance.

E. ENFORCEMENT. The Zoning Administrator and/or building inspector is authorized as the enforcing officer(s) for this ordinance, and shall enforce all provisions, entering actions in court, if necessary, and his failure to do so shall not legalize any violations of such provisions. The City Council may, by resolution or ordinance, from time to time, entrust administration of this ordinance in whole or in part, to another officer of the local jurisdiction, without amendment to this ordinance.

1. BUILDING PERMITS. Construction, alteration, repair, or removal of any building or structure or any part thereof, as provided or as restricted in this ordinance shall not be commenced except upon issuance of a building permit by the Building Inspector. The Building Inspector shall verify proper zoning.
2. OCCUPANCY PERMIT. Land, buildings or premises in any district shall hereafter be used only for a purpose permitted in such a district and in accordance with the appropriate regulations. A permit of occupancy shall be issued by the Zoning Administrator to the effect that the use, building or premises conform to provisions of this and all related ordinances, regulations and requirements prior to occupancy, for any building erected, enlarged or altered structurally for the occupancy or use of any land. Such a permit is needed whenever use or character of any building or land is to be changed.
3. INSPECTION. The Zoning Administrator or Building Inspector is authorized to inspect or to have inspected all buildings and structures during the course of their construction, modification, or repair, and to inspect land uses to determine compliance with the provisions of this ordinance. The Zoning Administrator or any authorized employee of the City shall exercise the right to enter any building for the purpose of determining the use, or to enter premises for the purpose of determining compliance with this ordinance, provided that such right of entry is to be used only at reasonable hours. In no case shall entry be made to any occupied building in the absence of an owner or tenant thereof without written permission of an owner, or written order of a court of competent jurisdiction.
4. SITE PLAN REQUIRED. A detailed site plan, drawn to scale shall be filed with the Building Inspector as part of any application for a building permit. The site plan shall show where pertinent:
 - a. Scale and North Arrow
 - b. Lot Lines and their dimensions
 - c. Adjacent streets, roads, rights-of-way and easements
 - d. Location of all existing structures on subject property and adjoining properties (completely dimensioned, including utility lines, poles, etc.).
 - e. An indication of the average slope of the lot based upon application of the formula provided in Chapter II, Section B.

- f. Location, proposed construction and improvements, including location of all landscape elements and signs.
- g. Motor vehicle access, including individual parking stalls, circulation patterns, curb, gutter, and sidewalk location.
- h. Necessary explanatory notes.
- i. Name, address and telephone number of builder and owner.
- j. The above, and any other information that may be requested by the Zoning Administrator or Building Inspector.

- F. PENALTIES. Any person, firm or corporation (as principal agent, employee or otherwise) violating, causing, or permitting violation of the provisions of this ordinance shall be guilty of a misdemeanor, and punishable as provided by law. Such person, firm, or corporation intentionally violating this ordinance shall be deemed to be guilty of a separate offense for each day during which any portion of any violation of this ordinance is permitted or continued by such person, firm, or corporation, shall be punishable as herein provided, see Chapter VIII.
- G. LICENSING. All departments, officials and public employees of Alpine City who are vested with duty or authority to issue permits or licenses shall conform to the provisions of this ordinance and shall issue no permit or license for uses, buildings, or purposes where the same would be in conflict with the provisions of this ordinance, and any such permit or license, if issued in conflict with the provisions of this ordinance shall be null and void.
- H. AMENDMENTS TO THE ZONING ORDINANCE OR DISTRICT MAP. Amendments to the ordinance may be initiated by the City Council, the Planning Commission, or by an owner of real property in the area included in the proposed amendment. Amendments shall first be submitted to the Planning Commission for its recommendation, which recommendation shall be submitted to the City Council for its consideration within forty (40) days. Failure on the part of the Planning Commission to present its recommendations within forty (40) days will be considered to constitute Planning Commission approval of the proposed amendment, unless an extension of time is granted by the City Council. Any application to change the boundary of a zoning district shall include an accurate map or other sufficient legal description of the area proposed for change. Before adoption of an amendment to the zoning ordinance, the City Council shall hold a public hearing thereon. At least fifteen (15) days notice of the time and place of the hearing shall be given at least one (1) publication in a newspaper of general circulation in Alpine, and by posting such notice in at least three (3) public places within the City.
- I. CREATION OF DISTRICTS AND DISTRICT MAP. In order to carry out the purposes of this ordinance, zone districts have been established as described in Chapter II and identified on a Zone District Map attached and made part of the ordinance. In the event of uncertainty as to the exact location of the boundary of any zoning district, the Zoning Administrator shall make

an interpretation of said map upon request; any person aggrieved by such interpretation may appeal same to the Planning Commission. In the interpretation of the map, the following criteria shall apply:

1. The zoning district boundary lines are intended to conform to property lines, or to be parallel or perpendicular thereto, or along the center lines of the public rights-of-way, unless such boundary lines are established by fixed dimensions shown on the map. Where zoning district lines approximately follow lot lines, such lot lines shall be construed to be the boundary.
2. Where a zoning district boundary line divides a lot, the location of such boundary lines, unless indicated by dimensions shown on the map, shall be determined by the use of the map scale shown thereon.

I. DEFINITIONS

1. ACCESSORY BUILDING. A detached subordinate building, the use of which is appropriate, subordinate, and customarily incidental to that of the main building or to the main use of the land and which is located on the same lot or parcel of land with the main building or use.
2. AGRICULTURE. The tilling of soil, the raising of crops, horticulture, and gardening, but not including the keeping or raising of domestic animals or fowl, except household pets, and not including any agricultural industry or business such as fruit packing plants, commercial egg production, or similar uses.
3. BUILDING. Any structure having a roof supported by columns or walls, built for the support, shelter, or enclosure of persons, animals, chattels, or property of any kind.
4. BUILDING HEIGHT. The vertical distance from the finished building grade that is lowest in elevation to the highest point of a flat roof, or to the deck line of a mansard-type roof, or to a point midway between the lowest part of the eaves or cornice and the highest part of the ridge of a gable or hip roof.
5. CONDITIONAL USE. A use of land for which a conditional use permit is required pursuant to Chapter V of this ordinance.
6. DWELLING. A building or portion thereof designed exclusively for residential occupancy, but not including hotels, tourist cabins, and boarding houses.
7. DWELLING, SINGLE-UNIT. A building arranged or designed to be occupied by one (1) family, the structure having only one (1) dwelling unit.
8. DWELLING, DUPLEX. A building arranged to be occupied by two (2) families, the structure having only two (2) attached dwelling units.

9. FAMILY. An individual or two (2) or more persons related by blood, marriage, or adoption, or a group of not more than four (4) persons, (excluding servants) who are not related, living in a dwelling unit as a single housekeeping unit and using common cooking facilities.
10. FRONTAGE. The width of the lot or parcel of land measured at the required front setback line.
11. GARAGE, PRIVATE; CARPORT. An accessory building for the parking or temporary storage of automobiles, but which does not involve commercial repairing or storage. On a lot with a dwelling, a garage or carport shall be considered a part of the dwelling if the two structures have one or more walls or a roof in common. Where a garage or carport is thus a part of a dwelling, it shall require the same side setback as a dwelling in the same district. Where a garage or carport is not a part of a dwelling, it shall be considered an accessory building.
12. GEOLOGIC HAZARD. A hazard inherent in the crust of the earth, or artificially created, which is dangerous or potentially dangerous to life, property, or improvements, due to movement, failure, or shifting of earth.
13. HANDICRAFT PRODUCTION. The production of individual or one-of-a-kind objects for sale on the site.
14. HOME OCCUPATION. Any use conducted entirely within a dwelling and carried on by persons residing in the dwelling and which is clearly incidental and secondary to the residential use of the building and which does not change the character thereof. The home occupation shall not involve the use of any accessory buildings (including open carports) or activity outside the buildings not normally associated with residential uses; nor shall the home occupation occupy more than 25 percent of the ground floor area of the dwelling. The use of mechanical equipment shall be limited to small tools whose use shall not generate noise, smoke, or odors perceptible beyond the premises of the home. Typical home occupations would include the use of the home by persons offering certain personal services or consultation, or handicraft production. No persons except members of the residing family shall be employed, and no commercial vehicles shall be used in connection with the home occupation. Business signs are not allowed except one unlighted sign describing the home occupation, which shall not exceed one and one-half (1-1/2) square feet in area and which shall be attached to and parallel with the wall of the building.
15. HOUSEHOLD PETS. Animals or fowl ordinarily permitted in a residence and kept for company or pleasure, such as dogs, cats, fish and canaries. Household pets do not include inherently or potentially dangerous animals or fowl, or those normally considered agricultural livestock.
16. IMPERVIOUS MATERIAL. Matter that is impenetrable as by moisture.

17. LOT. A parcel or unit of land describable either by metes and bounds, or by other legal plat designation held or intended to be held in separate ownership or leasehold or a parcel or unit of land shown as a lot or parcel on a recorded subdivision map, or shown on a plat used in the lease or sale or offer of lease or sale of land resulting from the division of a larger tract into smaller units.
18. MOBILE HOME. A detached dwelling designed for long-term occupancy and to be transported on its own wheels, or on a flatbed or other trailers or detachable wheels, and arriving at the site where it is to be occupied as a complete dwelling unit ready for occupancy except for connections to utilities and other minor work. Removal of such wheels or placing such dwelling unit on a foundation shall not remove such unit from classification as a mobile home. Excluded from this definition shall be those permanent dwelling structures that are constructed of component parts that are transported to the building site and which meet structural requirements of the Uniform Building Code and which are finished with exterior building material that is typical of permanent residential buildings.
19. NON-CONFORMING USE. A building or structure, or portion thereof, or use of a building or land which does not conform to use regulations for the district in which it is situated, but which was in conformity with said regulations, if any, at the time of its establishment.
20. OFFSTREET PARKING. An area adjoining a building providing for the parking of automobiles which does not include a public street but has convenient access to it.
21. OFFICE, PROFESSIONAL. A building or space used by persons such as accountants, architects, artists, dentists, designers, engineers, lawyers, physicians, realtors, teachers, and others who, by virtue of training and for license, are qualified to perform services of a professional nature, and where storage of goods and sale of merchandise is minimal and secondary to performance of the service.
22. OPEN SPACE. The use of land which leaves soil generally undisturbed and upon which natural vegetation, whether or not native to the area, occupies the major visible aspect of the land.
23. PERMITTED USE. A use of land for which no conditional use permit is required.
24. PUBLIC USE. A use operated or supervised exclusively by a public body, such use having the purpose of serving the public health, safety, or general welfare, and including uses such as public schools, parks playgrounds, and other recreational facilities, administrative and service facilities, and public utilities.
25. QUASI PUBLIC USE. A use operated by a private non-profit educational, religious, recreational, charitable or philanthropic institution, such use having the purpose primarily of serving the general public, such as churches, private schools, hospitals and similar uses.

26. RECREATION, PRIVATE. Recreation facilities operated as a business on privately owned property and open to the public for a fee, such as a golf course, ski lift, tennis court, etc.
27. RECREATION, PUBLIC. Recreation facilities operated by a public agency and open to the public with or without a fee.
28. SIGN. Any device for visual communication to the public displayed out-of-doors, including signs painted on exterior walls, and interior illuminated signs, to be viewed from out-of-doors, but not including a flag, badge, or ensign of any government or government agency.
29. STREET, PUBLIC. A thoroughfare which has been dedicated and accepted by proper public authority (or abandoned to the public) or a thoroughfare not less than twenty-four (24) feet wide which has been made public by right of use and which affords the principal means of access to abutting property.
30. STRUCTURE. Anything constructed, the use of which requires fixed location upon the ground, or attached to something having a fixed location upon the ground, and which creates an impervious material on or above the ground; definition includes "building."
31. YARD. A required space on a lot other than a court, unoccupied and unobstructed from the ground upward, by buildings, except as otherwise provided herein.
32. YARD, FRONT. A space between the front of the main building on a lot and the front lot line or line of an abutting street or right-of-way and extending across the full width of a lot. The depth (or setback) of the front yard is the minimum distance between the front lot line, and the frontmost part of the primary structure of the nearest main building. (Primary structure includes overhangs and porches, and decks).
33. YARD, REAR. A space between the rear property line of a lot and the back wall of the nearest main buildings extending the full width of the lot. The depth (or setback) of the rear yard is the minimum distance between the rear lot line and the rearmost part of the primary structure of the nearest main building. (Primary structure includes overhangs and porches and decks).
34. YARD, SIDE. A space between the side property line of a lot and the side of the closest main building, extending the full width of the lot. The depth (or setback) of the side yard is the minimum distance between the side lot line and the nearest part of the primary structure of the nearest main building. (Primary structure includes overhangs and porches and decks).

CHAPTER II
ESTABLISHMENT OF DISTRICTS AND REGULATIONS

The following zone districts are hereby established for the City of Alpine:

- A. T-R Town Residential District
- B. C-R Country Residential District
- C. A-F Agriculture/Forest District
- D. B-C Business Commercial District
- E. S-C Service Commercial District

A. TOWN RESIDENTIAL DISTRICT (T-R)

1. PURPOSE. To allow for residential growth within the originally settled town center of Alpine; to maintain the village scale and character; to provide for appropriate community activities and civic buildings; and to allow a density of development that is compatible with the limitations of municipal resources.
2. PERMITTED USES.
 - a. Single-unit detached dwelling
 - b. Parks and recreational open space, public and private
 - c. Agriculture, including the raising of row crops, grains and fruits
 - d. The keeping and raising of animals and fowl (See Farm Animal Regulations, Section II, A,5).
3. CONDITIONAL USES.
 - a. Cemetery
 - b. Child nursery or group day care center
 - c. Civil buildings
 - d. Duplex dwelling
 - e. Home occupation
 - f. Nursing home
 - g. Institutions, private, public and quasi-public (schools, churches, hospitals).

4. DENSITY AND LOT REGULATIONS.

- a. Lot Size. The minimum lot area for a single-unit dwelling shall be 10,000 square feet. The minimum lot area for a duplex (two unit) dwelling shall be 12,000 square feet.
- b. Lot Coverage. No lot within the T-R District may be covered over more than fifty (50) percent of its land area by buildings or other impervious material.
- c. Front Yard. The minimum front yard for all main dwelling structures shall be thirty (30) feet (measured from the front property line). Accessory buildings shall be placed forty-five (45) feet from the front property line. Dwellings fronting on a common-use private lane shall be at least forty-five (45) feet from the center line of the lane.
- d. Side Yard-Interior Lots. All dwellings shall be situated on the lot to allow for a side yard on each side of the main building the aggregate widths of which shall be at least twenty-two (22) feet. Neither side yard shall be less than ten (10) feet wide. The minimum side yard set back for accessory buildings shall be five (5) feet. No side set back shall be required for accessory buildings having fire resistive walls of one (1) hour or more.
- e. Side Yard-Corner Lots. On corner lots, the front and side yard requirements shall be the same as above, except that the side set back from the street for all buildings shall not be less than thirty (30) feet. Accessory buildings shall be placed at least sixty (60) feet from the front street and at least thirty (30) feet from the side street.
- f. Rear Yard-Interior Lots. All main dwelling structures shall be set back from the rear property line a distance not less than twenty (20) feet. The minimum rear yard set back for accessory buildings shall be ten (10) feet; no rear set back shall be required for accessory buildings having fire resistive walls of one (1) hour or more.
- g. Rear Yard-Corner Lots. All main dwelling structures shall be set back from the rear property line a distance of thirty (30) feet. The minimum set back for accessory buildings shall be fifteen (15) feet; no rear set back shall be required for accessory buildings having fire-resistive walls of one (1) hour or more.
- h. Lot Width. The minimum width of any lot for a dwelling shall be ninety (90) feet, measured at the required front yard set back line.
- i. Building Height. The maximum height of all buildings in the T-R District shall be thirty (30) feet.

5. FARM ANIMAL REGULATIONS, T-R DISTRICT.

- a. Animals and fowl allowed in the T-R District shall be used only for family food production or the enjoyment and convenience of the owner and subject to the regulations of the State Health Department and the City of Alpine, and shall be limited as follows: one cow, horse, goat, or pig for each ten thousand (10,000) square feet of lot area or one sheep for each four thousand (4,000) square feet of lot area, provided that not more than five (5) horses or cows and their suckling offspring and not more than two (2) pigs and their suckling offspring and not more than ten (10) sheep and their suckling offspring, may be kept.
- b. Barns, stables, corrals, pens, coops and runs for the keeping of animals and fowl are allowed provided such uses are located at least seventy-five (75) feet from the nearest dwelling or other building used for human occupancy and not closer than seventy-five (75) feet to any public street. This limitation shall apply also to structures intended for storage or agricultural products.

B. COUNTRY RESIDENTIAL DISTRICT (C-R)

1. PURPOSE. To allow residential development on the traditional agricultural lands of Alpine as well as in the foothills and mountain slopes; to provide for the perpetuation of the rural and Alpine image while reducing the impact of development on lands that are highly visible and susceptible to erosion; and to allow a density of development that is compatible with the limitations of municipal resources.
2. PERMITTED USES.
 - a. Single-unit detached dwelling
 - b. Parks and recreation open space, public and private, and appurtenant structures
 - c. Agriculture, including the raising of crops. (See Agricultural Regulations II, B, 5).
 - d. The keeping and raising of animals and fowl. (See Agricultural Regulations, Regulation II, B, 5).
3. CONDITIONAL USES.
 - a. Cemetery
 - b. Residential Cluster (See Regulations, II, B, 6).
 - c. Residential Complex (See Regulations, II, B, 7).
 - d. Home Occupation

e. Institutions, Private, Public and Quasi-public (schools, churches, hospitals).

f. Nursery and Tree Farm.

4. DENSITY AND LOT REGULATIONS.

Density and lot size in the C-R District shall be directly related to the slope of the land.

a. Lot Size and Coverage. Determination of average slope. For single-unit detached dwellings, average slope of each lot may be relied upon for determination of lot size. Average lot slope may be found by use of the following formula:

$$S = \frac{.0029 (I) (L)}{A}$$

where S = average percent of slope

A = total number of acres in given parcel

L = summation of the length of all contour lines, in feet

I = contour interval in feet

Lot Size Table

<u>Average Slope of Lot</u>	<u>Minimum Allowable Lot Size</u>	<u>Percentage that May Be Covered With Impervious Material</u>
0 - 9.9%	20,000 (.46 acre)	40%
10 - 14.9%	30,000 (.68 acre)	30%
15 - 19.9 %	40,000 (.09 acre)	25%
20 - 24.9%	60,000 (1.37 acre)	20%
25+	80,000 (1.8 acre)	15%

b. Front Yard. Same as required in the T-R District.

c. Side Yard-Interior Lots. For single-unit detached dwellings, main buildings shall be situated on the lot to allow for a side yard on each side of the main building the aggregate width of which shall be at least thirty (30) feet. Neither side yard shall be less than twelve (12) feet. The minimum side yard set back for accessory buildings shall be ten (10) feet. No set back shall be required for accessory buildings having fire-resistive walls of one (1) hour or more.

- d. Side Yard-Corner Lots. On corner lots, the front, rear and side yard requirements shall be the same as above, except that the set back on any side that faces onto a public street shall be not less than thirty (30) feet.
- e. Rear Yard-Interior Lots. All main dwelling structures shall be set back from the rear property line a distance of not less than thirty (30) feet. The minimum rear yard set back for accessory buildings shall be fifteen (15) feet. No set back shall be required for accessory buildings having fire-resistive walls of one (1) hour or more.
- f. Rear Yard-Corner Lots. Rear yard set back for dwellings on corner lots shall be the same as that required for interior lots.
- g. Lot Width. The minimum width of any lot for a single-unit dwelling shall be one hundred ten (110) feet measured at the required front yard set back line.
- h. Building Height. The maximum height of all buildings in the C-R District shall be thirty (30) feet.

5. AGRICULTURAL REGULATIONS, C-R DISTRICT.

- a. On lots of greater than twenty (20) percent average slope, the type and extent of agricultural use shall require review and approval by the Planning Commission.
- b. The raising and feeding of animals for family food production or enjoyment shall be regulated by the standards established for the T-R District, see II, 5, a. The raising of poultry shall be allowed but limited to fifty (50) birds. Commercial stables or feed lots shall be limited to one hundred (100) head.
- c. The raising of fur bearing animals shall require review and approval of Planning Commission.
- d. Barns, stables, corrals, pens, coops and runs for the keeping of animals and fowl are allowed provided such uses are located at least seventy-five (75) feet from the nearest dwelling or other building used for human occupancy. Such facilities shall be maintained in a clean and inoffensive condition.

6. REGULATIONS FOR RESIDENTIAL CLUSTER, C-R DISTRICT.

- a. Land Area Requirement. The minimum land area required for a site to qualify for a residential cluster is five (5) acres. The land must be held in an individual or single corporate ownership.
- b. Density Allowance. On land qualified for a residential cluster, a developer may construct dwelling units to a density of 2.0 units per gross acre.

- c. Minimum Area per Unit. In a residential cluster, each dwelling unit shall occupy a land area of no less than ten thousand (10,000) square feet, and shall have an individual septic tank; lot size and septic tank shall comply with standards of the State Department of Health and the City of Alpine.
- d. Open Space Requirement. An applicant for a residential cluster development permit shall provide, at the time of approval, assurance to the city that at least fifty (50) percent of the total area of the land will be reserved for agriculture, or other open space use (allowing for appurtenant structures) for a period of time as established by the Alpine City Open Space Ordinance. In determination of the 50 percent open space requirement, no part of land area required for each dwelling unit may be counted.
- e. Cluster Development Standards. The developer is allowed considerable flexibility in the arrangement of dwelling structures on the site. The following development standards, however, should be observed:
 - (i) Lots for dwelling units must be contiguous, creating an identifiable cluster within the total site and continuous open land in the required open space area. Yard size and site development are optional, but must be reviewed by the Planning Commission.
 - (ii) No structure comprising a residential cluster shall be constructed on land of greater than twenty (20) percent slope.
 - (iii) All dwelling units must have access to a public street or a common-use private lane that conforms with all requirements of the City of Alpine.
 - (iv) No dwelling structure within a cluster shall be placed closer than thirty (30) feet from the right-of-way line of a public street or within forty-five (45) feet of a private lane.
 - (v) The Planning Commission shall encourage aesthetically pleasing and sensitive architectural design to the end that the structures complement each other and are consistent with the visual character of Alpine.

7. REGULATIONS FOR RESIDENTIAL COMPLEX, C-R DISTRICT.

- a. Land Area Requirement. The minimum land area required for a site to qualify for a residential complex is five (5) acres. The land must be held in an individual or single corporate ownership.
- b. Density Allowance. A developer may construct residential dwelling units to a density of 2.5 units per gross acre.
- c. Minimum Area per Unit. In a residential complex, each dwelling shall occupy a land area of no less than four thousand (4,000) square feet, and no greater than five thousand (5,000) square feet.

- d. Dwelling Units per Complex. Each complex shall have a common septic system, and shall be limited to twenty (20) units per complex.
- e. Open Space Requirement. An applicant for a residential complex development permit shall provide, at the time of approval, assurance to the city that seventy-five (75) percent of the total area of the land will be reserved for agriculture, or other open space use (allowing for appurtenant structures) for a period of time as established by the Alpine City Open Space Ordinance. In determination of the 75 percent open space requirement, no part of the land area required for each dwelling unit may be counted.
- f. Development Standards. The developer is allowed maximum flexibility in the arrangement of dwelling structures and in site planning. The following site development standards, however, shall be observed:
 - (i) Each complex shall be arranged such that the land over the common septic tank absorption field is kept free of imperVIOUS material or heavy compaction, (viz., parking of automobiles, or heavy equipment).
 - (ii) The design and arrangement of structures and intervening common spaces, landscaping, etc., shall be reviewed and approved by the Planning Commission.
 - (iii) All complexes must be served by a common private lane or public street that complies with all requirements of this ordinance.
 - (iv) No dwelling structure within a complex shall be placed closer than thirty (30) feet from the right-of-way line of a public street or forty-five (45) feet from the center line of a common-use private lane.
- g. Design and Maintenance of Common Septic Systems. No common septic system serving more than four (4) dwelling units shall be approved for construction under this ordinance unless continued proper maintenance is assured by a home owner's association, or other similar organizations, by written agreement. The city shall reserve the right to enter upon and undertake maintenance in the event of default with all costs thereof remaining as the responsibility of the property owners. The design of all systems shall comply with standards of the State Health Department and the City of Alpine.

C. AGRICULTURAL/FOREST DISTRICT (A-F)

- 1. PURPOSE. To allow for low density residential and agricultural or other open space uses in areas that are predominantly agricultural, hillside, forest, or generally undeveloped. A-F zoning may be used as a temporary designation in anticipation of a more permanent zone assignment.

2. PERMITTED USES.

- a. Uses in existence at the time of A-F zone designation may continue as a permitted use.
- b. Single-unit detached dwelling.
- c. Parks and recreational open space, public and private
- d. Agriculture, including the raising of row crops, grains and fruits.
- e. The keeping and raising of animals and fowl.

3. CONDITIONAL USES.

- a. Home occupation
- b. Nursery and Tree Farm

4. DENSITY AND LOT REGULATIONS.

- a. Lot Size and Coverage. The minimum lot size for a single-unit detached dwelling is five (5) acres. No more than five (5) percent of a lot may be covered by buildings or other impervious material.
- b. Slope limitation. No buildings or other impervious materials shall be allowed on slopes of over thirty (30) percent.
- c. Lot Regulations. All yard set backs shall be the same as those established for the C-R District.
- d. Building Height. The maximum height of all buildings in the A-F District shall be thirty (30) feet, with no more than two (2) stories above the finished grade.

D. BUSINESS/COMMERCIAL DISTRICT (B-C)

- 1. PURPOSE. To allow for a pedestrian-scaled shopper business district in the traditional center of Alpine that will serve the immediate needs of the Alpine residents. Residential uses may continue as in the surrounding district, although desired commercial activities will be encouraged in preference to new residential development.

2. CONDITIONAL USES.

- a. Agriculture, including the raising of row crops, grains and fruits.
- b. Antique store
- c. Art gallery and sales

- d. Apparel Shop
- e. Dining (no food served to cars)
- f. Drug Store
- g. Duplex Dwelling
- h. Financial Service
- i. Grocery Store
- j. Hardware Store
- k. Parks and Recreational Open Space, public and private
- l. Personal Service (barber, beauty, dry cleaner, etc.)
- m. Office
- n. Single-unit detached dwelling
- o. Theatre
- p. Uses considered similar and compatible

4. YARD AND LOT STANDARDS. All residential uses shall comply with standards established for the T-R District. Commercial uses shall comply with Development Standards below.

5. DEVELOPMENT STANDARDS FOR BUSINESS-COMMERCIAL.

- a. There shall be no storage of merchandise materials, refuse, or equipment outside of enclosed buildings.
- b. Business signs must comply with the Alpine City Sign Ordinance.
- c. Off-street parking for commercial use areas shall comply with the regulations of Chapter VI, and must be subordinate in visual impact to pedestrian areas.
- d. Commercial buildings shall be placed no closer than ten (10) feet from any property line that fronts on a public street (this requirement may be modified by Planning Commission). There shall be no side or rear yard requirements. The Planning Commission shall review all proposals for new commercial structure, or the commercial conversion of existing structures, to assure protection of abutting residential dwellings.
- e. Height limit for commercial buildings shall be thirty (30) feet with no more than two (2) stories above the finished grade.
- f. Commercial buildings shall comply with the following architectural design criteria. (Preliminary architectural design drawings of all building elevations shall be presented to the Planning Commission for review).

- (i) The exterior of all commercial buildings shall be finished predominantly with wood and/or brick; pitched roofs are preferred.
- (ii) The architectural styles of the business district should be consistent and harmonious. The style of building design and trim should be compatible with the relatively uncomplex rural, small town character of Alpine. Extremely irrelevant contrived or inconsistent styles will be discouraged.

E. SERVICE COMMERCIAL DISTRICT (S-C)

1. PURPOSE. To provide areas for automobile-oriented and light industrial commercial uses near the business district of Alpine; this district will allow desired commercial activities which are not necessarily compatible with residential or business commercial uses.
2. CONDITIONAL USES.
 - a. Agriculture, including raising of row crops and fruits
 - b. Automotive Services
 - c. Equipment storage and repair
 - d. Light manufacturing and handicraft production
 - e. Lumber and Hardware Sales
 - f. Offices
 - g. Single Unit or Duplex Dwelling
 - h. Uses considered similar and compatible
3. YARD AND LOT STANDARDS. All permitted uses shall comply with standards established for the T-R District. Conditional uses shall comply with Development Standards, below.
4. DEVELOPMENT STANDARDS FOR SERVICE COMMERCIAL.
 - a. Outside storage of merchandise, equipment, or refuse, or the parking of trucks larger than panel or pick-up trucks shall be screened from all public streets or walkways by natural landscaping and/or fence.
 - b. No land or building shall be used in any manner so as to create dangerous, injurious, noxious or otherwise objectionable fire, explosive, or other hazard, noise, or vibration, smoke, dust, odor, or other form of air pollution; liquid or solid refuse or wastes; or other substance, condition or element in such a manner or in such an amount as to effect adversely the surrounding area or adjoining premises.

- c. Side and rear yards shall be established in a manner that will protect abutting residential structures. The siting of commercial structures shall be reviewed by the Planning Commission before issuance of the conditional use permit,
- d. Business signs shall comply with the Alpine City sign ordinance.
- e. Commercial buildings should comply with the general architectural guidelines established for the business commercial uses (E, 5, f).

CHAPTER III

SUPPLEMENTARY AND QUALIFYING REGULATIONS

- A. PURPOSE. The regulations set forth in this chapter shall qualify or supplement, as the case may be, the regulations appearing elsewhere in this ordinance.
- B. LOT STANDARDS. Except for the more flexible requirements covering residential clusters and complexes, or as may be otherwise provided in this ordinance, every lot within the city shall have such area, width and depth as is required by this ordinance for the district in which such lot is located and shall have frontage upon a dedicated or publicly-approved street or upon a common-use private lane, or other private lane, approved by the Planning Commission, before a building permit may be issued.
- C. SUBSTANDARD LOTS. The requirements of this ordinance as to minimum lot area or lot width shall not be construed to prevent the use for a single-unit dwelling of any lot or parcel of land in the event that such lot has been held in separate ownership since and complied with zoning regulations in effect prior to that date.
- D. SALE OR LEASE OF REQUIRED SPACE. No space needed to meet with the width, yard, area left in natural condition, off-street parking or other such requirements of this ordinance for lot or building shall be sold or leased away from such lot or building.
- E. FRONTAGE ON ARTERIAL STREETS. No driveway, or other vehicular access to an individual lot, shall open onto any public street designated by the official city street plan as an Arterial Street. Lots developed prior to adoption of this ordinance shall be exempt from this requirement.
- F. FENCES, WALLS AND HEDGES. Fences, walls and hedges may be erected or allowed to the permitted building height when located within all required set back or yard limits, provided that any physical structure over six (6) feet in height shall require a building permit. Fences, walls and hedges shall not exceed three (3) feet in height within ten (10) feet of the front yard line and shall not exceed six (6) feet within any required rear yard or interior side yard. On corner lots, the three (3) foot height limit shall apply in all street frontage to assure visibility. Exceptions may be granted on corner lots if it can be shown that visibility at the street intersection, or at the driveway, will not be impaired. Where a fence, wall or hedge occurs along a property line separating two lots and there is a difference in the grade of the properties, the fence, wall or hedge may be erected or allowed to the maximum height permitted on either side of the property line.
- G. COMMON-USE PRIVATE LANE. The use of a private lane to provide vehicular access to more than one but no more than four (4) residential dwelling units is allowed in Alpine City. Permission to develop a lane may be granted by the Planning Commission upon receipt of a construction and maintenance agreement assuring that all conditions contained in this ordinance shall be met.

1. All lanes and utilities to dwellings served by a lane shall be developed and maintained by a property owners' association or other permanent organization capable of entering into a contract with the city. Any lane or portion of a lane shall be protected by a maintenance agreement with no more than one (1) association or contract.
2. Any dwelling unit that is served exclusively by a common-use private lane shall occupy a lot that is no less than one (1) acre in size. All dwelling structures shall be at least fifty-seven (57) feet from the center line of the lane.
3. No residential dwelling whose only access is a common-use lane shall be more than six hundred (600) feet driving distance from a dedicated public street. This limit may be extended by the Planning Commission to one thousand two hundred (1,200) feet if circumstances exist such that compliance with this requirement would constitute a hardship.
4. A dead-end lane shall be provided with a turn-around of not less than thirty-five (35) foot radius. A dead-end lane shall extend no longer than four hundred (400) lineal feet from a dedicated street to the center point of the turn-around. This limit may be extended by the Planning Commission to eight hundred (800) feet if circumstances exist such that compliance with this requirement would constitute a hardship.
5. Lanes shall be paved with a bituminous surface and road base that conforms to Alpine City standards as established by the Alpine Subdivision Ordinance.
6. Each common-use shall be established on a twenty-four (24) foot public easement with a minimum paving width of sixteen (16) feet. Fences or other obstructions shall not be constructed within the twenty-four foot easement.
7. All lanes shall be graded during original construction to allow proper drainage. The grading of the lane shall provide for the acceptable on-site disposal of surface water or effective transition into an existing public disposal system. Maintenance shall be provided to assure continued adequate drainage of surface water. Drainage plan shall be reviewed and approved by the City Engineer.
8. All lanes shall be maintained and repaired as needed to assure continuation of the required paved surface; and the adequate drainage of surface water. Lanes shall be kept free of excessive snow or other impediments to the safe operation and passage of public emergency vehicles.
9. The installation of all utilities (including fire hydrants) shall comply with City Standards and shall be inspected by the City Engineer during installation. The City shall be granted an easement to enter upon the lane at anytime for inspection of utilities and for maintenance and repair work, when private maintenance is found to be inadequate.

- H. EXCEPTIONS TO HEIGHT LIMITATIONS. Accessory roof structures required to operate and maintain any building used for human occupancy such as chimneys, skylights, water tanks, air-conditioners, steeples, flag poles, antennae, etc., may be erected above the height limits, provided no such accessories are to be used for human occupancy. Structures appurtenant to agricultural uses, such as silos or barns used only for the storage of animals, equipment, or agricultural products, may also exceed the height limitations.
- I. SEPTIC TANK STANDARDS AND INSPECTION. No building permit shall be issued until a soil percolation test consistent with requirements of the Utah State Division of Health has been performed and approved by the City Building Inspector. The Building Inspector may, on the basis of the results of such percolation test, require larger lot sizes than allowed in other chapters of this ordinance.
- J. STORAGE OF GAS. Gasoline storage will not be permitted above ground level.

CHAPTER IV
NONCONFORMING BUILDINGS AND USES

- A. PURPOSE. This chapter describes the status of the uses of land or structures which were lawful before this ordinance was passed but which are now prohibited or restricted. It is the purpose of this ordinance to prevent the expansion or enlargement or nonconforming uses.
- B. OCCUPANCY.
1. CONTINUATION. The occupancy of a building or parcel of land by a non-conforming use existing at the time of passage of this ordinance may be continued.
 2. CHANGE OF USE. The nonconforming use of a building or land may not be changed except to a conforming use, and where such a change is made, the use shall not thereafter be changed back to a nonconforming use.
 3. ONE-YEAR VACANCY. A building or structure or portion thereof occupied by a nonconforming use, which is, or hereafter becomes, vacant and remains unoccupied by a nonconforming use for a continuous period of one (1) year, shall not thereafter be occupied except by a use which conforms to the use regulations of the district in which it is located.
 4. OCCUPATION WITHIN A YEAR. A vacant building or structure may be occupied by a use for which the building or structure was designed or intended if so occupied within a period of one (1) year after the use became nonconforming.
- C. MAINTENANCE REPAIRS OR ALTERATIONS.
1. MAINTENANCE. A nonconforming building or land use may be granted normal maintenance care.
 2. REPAIR. Repairs and structural alterations may be made to a non-conforming building or to a building housing a conforming use.
- D. ADDITIONS, ENLARGEMENT AND MOVING.
1. No nonconforming use shall be enlarged or increased in any manner unless such building or use is made to conform to all regulations of the district in which it is located or unless such enlargement or increase can be shown to be necessary for the convenience or welfare of the public.
 2. A building or structure nonconforming as to height, area or yard regulations shall not be added to or enlarged in any manner unless such addition or enlargement falls within all the regulations of the district in which it is located. A nonconforming use may be increased if expansion occurs entirely within a building in which it was conducted at the time the use became nonconforming. A nonconforming use that is being conducted in an open area may be enclosed by a structure as long as the structure conforms to size and yard requirements of the district in which it is located.

CHAPTER V
CONDITIONAL USES

- A. PURPOSE. The conditional use permit is intended to allow the use of certain lands and for structures which may be acceptable under special conditions and in specific locations within a zone district, but unacceptable under general conditions or in other locations. Such uses are described as conditional uses and require conditional use permits.
- B. PERMIT REQUIRED. A conditional use permit shall be required for those uses listed as conditional uses in the district regulations or elsewhere in this ordinance. A conditional use permit may be revoked upon failure to comply with conditions precedent to the original approval of the permit.
- C. DETERMINATION. The Alpine City Planning Commission may permit a conditional use in any district in which the particular use is designated as a conditional use in the use regulations of this ordinance.

In authorizing a conditional use, the Planning Commission shall impose such requirements and conditions as are necessary for the protection of adjacent properties, the public welfare, and achievements of the objectives of the Alpine Comprehensive Plan. The Planning Commission, shall itemize, describe, or justify the conditions imposed on the use.

- D. RIGHT OF APPEAL.
 - 1. Any person shall have the right to appeal any decision or conditions rendered by the Planning Commission to the City Council.
 - 2. Such appeal shall be filed in writing with the City Recorder, or such other official as the Council may designate, within fourteen (14) days of the presentation of the decision by the Planning Commission. The appeal shall include statements to substantiate the claim that the decision of the Planning Commission is unreasonable or in error, and the reasons therefore.
 - 3. The City Council may, after proper review, reverse, alter or remand for further review the matter at issue and its decision shall be final.
- E. BUILDING PERMIT. Following issuance of a conditional use permit by the Planning Commission, the Building Inspector may approve an application for a building permit and shall insure that development is undertaken and completed in compliance with said permits and conditions pertaining thereto.

F. TIME LIMIT.

1. A conditional use permit for temporary uses may be issued for a maximum period of six (6) months, with renewals at the direction of the Planning Commission for not more than three (3) successive periods thereafter.
2. Unless there is substantial action initiated under a conditional use permit within a period of one (1) year of its issuance, the permit shall expire. The Planning Commission may grant a maximum extension of six (6) months if application is made to the Planning Commission within fourteen (14) days after expiration.

CHAPTER VI

OFF-STREET PARKING

- A. REQUIREMENT. Except as may be provided elsewhere in this ordinance, there shall be provided at the time of erection of any building or at the time any main building is enlarged or increased in capacity, minimum off-street parking space with adequate provisions for ingress and egress by standard-sized automobiles. If any land, structure or use is changed from one use to another which requires more off-street parking spaces, there shall be provided such additional off-street parking for the new use as is required by this chapter.
- B. PARKING LOT CHARACTERISTICS. Each parcel of land developed for off-street parking in response to the requirements of this chapter shall provide the following characteristics:
1. SURFACING. Each lot shall have a paved all weather surfacing material and be maintained in good condition and kept clear and in an unobstructed and usable condition at all times. Responsibility for maintenance of the lot shall rest with the property owner. The lot shall provide adequate access to a street or alley.
 2. GRADING. Parking lots shall be graded for proper drainage with surface water diverted in such a way as to keep the parking area free of accumulated water or ice.
 3. LIGHTING. Lots shall be properly illuminated with standards arranged so as to reflect light away from any adjoining residential buildings.
 4. SIZE OF SPACES. Each parking space shall measure at least nine (9) feet wide by eighteen (18) feet long.
- C. SPECIFIC REQUIREMENT FOR EACH LAND USE. Required off-street parking shall be provided for each use as listed below. Requirements calculated on square footage of commercial space shall be based upon floor area devoted to the principal use or sales and shall not include area devoted to storage, restrooms, or maintenance areas. Parking for uses not specifically listed below shall be provided in the same ratio as the use most nearly approximating the characteristics of the unlisted use, as determined by the Planning Commission. Parking shall be provided as follows, with spaces based upon one or a combination of uses listed:

Use	Parking Requirement
1. Residential Uses	
Single-unit Dwelling	Two (2) parking spaces
Two-unit Dwelling	Two (2) parking spaces per unit
2. Intensive retail commercial shops selling directly to the public	Four (4) spaces for each 1,000 square feet of retail sales space.
3. Less intensive commercial business, as furniture, appliance, and lumber sales	Two (2) spaces for each 1,000 square feet of retail sales space.
4. Offices and personal services, including medical and dental clinics	Two (2) spaces for each 1,000 square feet, plus one (1) for each employee per shift.
5. Restaurants, dining rooms	One (1) space for every four (4) seats.
6. Churches, auditoriums, assembly halls, theatres	One (1) space for every five (5) seats.
7. Commercial recreation	Two (2) spaces for every 1,000 SF
8. Industrial and wholesale establishments	One (1) space for every two employees on the largest shift.
9. Mortuary	One (1) space for every three hundred (300) SF of gross floor area.
10. Hospitals, schools, civic buildings	Determined by specific review.
11. Shopping centers, or complexes of rentable commercial space	At least four (4) spaces per 1,000 square feet of retail sales space.
D. CALCULATION OF SPACES. If the calculation of required spaces results in a fractional number, such fraction should be rounded off to the next higher whole number.	

CHAPTER VII

BOARD OF ADJUSTMENT

- A. CREATION OF BOARD OF ADJUSTMENT. There is hereby created a Board of Adjustment, which shall consist of six (6) members, each to be appointed by the City Council, for a term of six (6) years, provided that the terms of the members of the first board so appointed shall be such that the term of one member shall expire each year. Any member may be removed for cause by the City Council upon written charges and after public hearing, if such public hearing is requested. Vacancies shall be filled for the unexpired term of any member whose term is not completed. One member, but not more than one, of the Planning Commission shall be a member of the Board of Adjustment.
- B. ORGANIZATION OF BOARD. The Board of Adjustment shall organize and elect a chairman and adopt rules in accordance with the provisions of this ordinance. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. The chairman or, in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses. The chairman shall not vote except in the absence of a member or in case of a tie. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be filed immediately in the office of the board and shall be a public record.
- C. DECISION OF APPEALS. The Board of Adjustment shall hear and decide appeals from any decisions, orders, or requirements made by the Zoning Administrator. The board shall also hear and decide other matters referred to it, upon which it is required to pass under this ordinance.
- D. WHO MAY MAKE APPEALS. Any person or citizen or any officer, department, board, or bureau of the city may appeal to the Board of Adjustment by filing a request in writing with the Zoning Administrator. Upon the furnishing of such information as required by the rules and regulations of said board, the Zoning Administrator shall forthwith transmit to the said board all the papers, records, and other pertinent data appertaining to the appeal.
- E. NOTICE OF HEARING. The Board of Adjustment shall fix a reasonable time for the hearing of the appeal or other matters upon which it is required to pass and shall give public notice thereof, as well as due notice to the parties in interest, and shall decide the same within a reasonable time.
- F. STAY OF PROCEEDINGS PENDING APPEAL. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in

the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by restraining order which may be granted by the Board of Adjustment or by the district court upon application and notice and on due cause shown.

G. POWERS OF THE BOARD OF ADJUSTMENT.

1. To hear and decide appeals wherein it is alleged that there is error in any order, requirement, decision, or determination by the Zoning Administrator in the enforcement of this ordinance.
2. To grant a variance from the strict letter of the regulations of this ordinance, provided that a property owner can show that, because of exceptional narrowness, shallowness, or shape of a specific lot or parcel of land or by reason of peculiar topographical features or other unique situations the strict application of the terms of this ordinance would prohibit the use of his property in a manner reasonably similar to that of other property in the same zone. Before a variance can be granted, the board must find upon the evidence before it that the granting of a variance is in harmony with the purposes of the zoning plan.
3. To authorize the enlargement of or addition to a building or structure occupied by a nonconforming use, provided that it can be shown that the enlargement or addition is reasonably necessary to the health, safety, convenience, or general welfare of the public.
4. Where a zone boundary line divides a lot or parcel of record existing at the effective date of this ordinance into more than one zone, to permit the extension of a use authorized in either zone to include the entire lot, but not to the extent of more than fifty (50) feet.

H. DECISION. In the exercise of its duties and powers as herein set forth, the Board of Adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination of the Zoning Administrator and may make such order or requirement as ought to be made, provided, however, that in interpreting and applying the provisions of this ordinance the requirements contained herein shall be deemed to be the minimum requirements for the purposes set forth.

I. VOTE. The concurring vote of three members of the Board of Adjustment shall be necessary to decide on any matter upon which it is required to pass.

J. APPEAL. Any person aggrieved by any decision of the Board of Adjustment may have and maintain a plenary action for relief therefrom in any court of competent jurisdiction, provided that petition for such relief is presented to the court within thirty (30) days after the filing of such decision in the office of the Board of Adjustment.

CHAPTER VIII

PENALTIES

It shall be unlawful for any person to violate any of the provisions of this ordinance. Any person, firm, or corporation, whether as principal, agent, employee, or otherwise, violating or causing or permitting the violation of the provisions of this ordinance shall be guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not more than Two Hundred Ninety-nine (\$299.00) Dollars or by imprisonment in the county jail for a term not exceeding three (3) months, or by both fine and imprisonment. Each and every day during which such violation shall occur shall constitute a separate offense.

EXHIBIT "D"

